

March 21, 1996

*MODEL PROJECT COOPERATION AGREEMENT FOR CONSTRUCTION OF
RECREATION FACILITIES COST SHARED IN ACCORDANCE WITH THE FEDERAL
WATER PROJECT RECREATION ACT (PUB.L. 89-72, AS AMENDED)*

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR CONSTRUCTION OF RECREATION FACILITIES
COST SHARED IN ACCORDANCE WITH
THE FEDERAL WATER PROJECT RECREATION ACT
(PUB.L. 89-72, AS AMENDED)
AT THE
[FULL NAME OF EXISTING PROJECT]

THIS AGREEMENT is entered into this _____ day of _____, 19__, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer for the _____ District, and **[FULL NAME OF NON-FEDERAL SPONSOR]** (hereinafter the "Non-Federal Sponsor") **[NOTE: USE "NON-FEDERAL SPONSOR", "PROJECT SPONSOR", OR "STATE" CONSISTENTLY THROUGHOUT THE PROJECT COOPERATION AGREEMENT (PCA), AS PREFERRED BY THE SPONSOR]**, represented by the **[TITLE OF PERSON SIGNING THIS AGREEMENT]**.

WITNESSETH, THAT:

WHEREAS, construction of the **[FULL NAME OF EXISTING PROJECT]** at **[SPECIFIC LOCATION OF EXISTING PROJECT, INCLUDING STATE]** was authorized by **[CITE AUTHORITY]**;

WHEREAS, the Non-Federal Sponsor is authorized to administer land and water areas for recreational purposes, and to operate, maintain, and replace facilities provided for such purposes, and to enter into binding agreements for these purposes;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of recreation facilities (hereinafter the "Recreation Project", as defined in Article I.A. of this Agreement) at the **[FULL NAME OF EXISTING PROJECT]**;

WHEREAS, Section 2 of the Federal Water Project Recreation Act, approved July 9, 1965 (Pub.L. 89-72, as amended) specifies the cost-sharing requirements applicable to the Recreation Project;

WHEREAS, Section 221 of the Flood Control Act of 1970 (Pub.L. 91-611, as amended) and Section 103 of the Water Resources Development Act of 1986 (Pub.L. 99-662, as amended) provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Recreation Project in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Recreation Project" shall mean **[DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN DETAIL SUFFICIENT TO AVOID ANY CONFUSION OVER WHAT IS OR IS NOT INCLUDED. THE AGREEMENT MUST REFERENCE THE APPROVED PLAN OF RECREATION DEVELOPMENT AND MANAGEMENT THAT DEFINES THE SCOPE OF THE "RECREATION PROJECT". IF ONLY A PORTION OF THE FACILITIES IN THE PLAN ARE TO BE CONSTRUCTED UNDER THE PCA, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IS ACCURATELY DESCRIBED]** as generally described in the **[SPECIFY THE APPROVED PLAN OF RECREATION DEVELOPMENT AND MANAGEMENT]** (hereinafter the "Development Plan"), dated _____, 19____ and approved by **[CHOOSE THE APPROPRIATE ONE: Assistant Secretary of the Army (Civil Works) / Chief of Engineers / Commander, _____ Division]** on _____, 19____. The Recreation Project consists of the Federal Construction and the Non-Federal Construction, as described in the Development Plan.

[NOTE: IF THE DEVELOPMENT PLAN PROVIDES FOR THE GOVERNMENT TO CONSTRUCT THE ENTIRE PROJECT, THE PCA SUBMITTED TO HQUSACE FOR REVIEW SHOULD DELETE ALL REFERENCES TO "NON-FEDERAL CONSTRUCTION" AND SHOULD REPLACE ALL SUBSEQUENT REFERENCES

TO "FEDERAL CONSTRUCTION" WITH THE TERM "RECREATION PROJECT".]

B. The term "total separable recreation costs" shall mean the difference, as determined by the Government, between the capital cost of the entire **[FULL NAME OF EXISTING PROJECT]** multiple-purpose project and the capital cost of the **[FULL NAME OF EXISTING PROJECT]** project with the Recreation Project omitted. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of separable recreation lands, easements, rights-of-way, and relocations, as determined in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any joint costs of the entire **[FULL NAME OF EXISTING PROJECT]** multiple-purpose project; any costs for operation, maintenance, or replacement; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "joint costs" means the difference between the capital cost of the entire **[FULL NAME OF EXISTING PROJECT]** multiple-purpose project and the sum of the separable costs for all project purposes.

D. The term "capital cost" includes interest during construction, wherever appropriate.

E. The term "financial obligation for construction" shall mean a financial obligation of the Non-Federal Sponsor or the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total separable recreation costs.

F. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.I.2 of this Agreement to total financial obligations for construction, as projected by the Government.

G. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first

construction contract to the date that the U.S. Army Engineer for the _____ District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Recreation Project is complete.

H. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

I. The term "relocation" shall mean providing a functionally equivalent substitute facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the Development Plan. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

J. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

K. The term "functional portion of the Recreation Project" shall mean a portion of the Recreation Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Recreation Project. For a portion of the Recreation Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Recreation Project is complete and can function independently and for a useful purpose, although the balance of the Recreation Project is not complete.

L. The term "betterment" shall mean a change in the design and construction of an element of the Recreation Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

M. The term "Federal Construction" shall mean the portion of the Recreation Project that will be the responsibility of the Government to construct, in accordance with the Development Plan.

N. The term "Non-Federal Construction" shall mean the portion of the Recreation Project that will be the responsibility of the Non-Federal Sponsor to construct, in accordance with the Development Plan.

O. The term "separable recreation lands, easements, and rights-of-way" shall mean all lands, easements, and rights-of-way required for the construction, operation, maintenance and replacement of the Recreation Project, including those required for relocations, borrow

materials, and dredged or excavated material disposal, which are not otherwise required for the **[FULL NAME OF EXISTING PROJECT]**.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Federal Construction (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto) identified in the Development Plan, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Recreation Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Federal Construction (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Federal Construction.

[INCLUDE PARAGRAPH II.A.3. IF THE NON-FEDERAL SPONSOR DESIRES A "VOLUNTARY COST CAP."]

3. Notwithstanding paragraphs A. and D. of this Article, if, upon the award of any contract for construction of the Recreation Project, cumulative financial obligations for construction would exceed \$ _____, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Recreation Project until such time as the Government and the Non-Federal Sponsor agree to proceed with

further contract awards for the Recreation Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts for either the Federal Construction or the Non-Federal Construction after the U.S. Army Engineer for the _____ District makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. The Government shall make available those lands, easements, and rights-of-way to which the Government holds title and that the Government determines to be required for the construction, operation, maintenance and replacement of the Recreation Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. Furthermore, prior to the issuance of the solicitation for each contract for the Non-Federal Construction, the Government shall make available to the Non-Federal Sponsor, by short-term lease substantially in the form attached hereto as Exhibit A, any lands, easements, and rights-of-way to which the Government holds title and that the Government determines to be required for that contract.

D. The Non-Federal Sponsor shall plan, engineer, design, and construct the Non-Federal Construction identified in the Development Plan, in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall comply with all environmental laws applicable to the Non-Federal Construction, including any mitigation or other commitments in documents prepared pursuant to those laws.

2. The Non-Federal Sponsor shall not issue the solicitation for any contract for the Non-Federal Construction until the Government has approved the design, plans, specifications, and cost estimate for the contract.

3. The Non-Federal Sponsor shall not award any contract for the Non-Federal Construction until the Government has reviewed the bids and the proposed provisions of the contract and has approved the contract.

4. The Government shall be authorized to inspect the Non-Federal Construction at any and all times as the District Engineer considers necessary.

5. The Government shall perform an inspection of the Non-Federal Construction, or any portion thereof, after the Non-Federal Sponsor has notified the Government in writing of the completion of the Non-Federal Construction, or portion thereof, and has furnished to the Government post-construction as-built drawings. The Government shall approve in writing the completed Non-Federal Construction, or any portion thereof, upon a Government determination that the completed Non-Federal Construction, or portion thereof, conforms to the Recreation Project, as defined in Article I.A. of this Agreement, has been performed to the satisfaction of the Government in accordance with this Agreement, and is suitable for incorporation into the Recreation Project.

E. The Government and the Non-Federal Sponsor shall not undertake development of the recreation resources of the **[FULL NAME OF EXISTING PROJECT]** that would increase the scope of the Recreation Project unless both an amendment to the Development Plan to increase the scope of the Recreation Project is approved by the Government and this Agreement is modified in writing by mutual agreement of the Government and the Non-Federal Sponsor.

F. When the District Engineer determines that the entire Recreation Project is complete or that a portion of the Recreation Project has become a functional portion of the Recreation Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance and Replacement Manual (hereinafter the "OM&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Recreation Project, or the functional portion of the Recreation Project, that have not been provided previously.

G. Upon notification in accordance with Article II.F. of this Agreement, the Government shall make available to the Non-Federal Sponsor for management and administration, by lease substantially in the form attached hereto as Exhibit B, the use and occupancy of the entire Recreation Project or the functional portion of the Recreation Project, together with the land and water areas associated therewith, and the Non-Federal Sponsor shall operate, maintain, and replace the Recreation Project, or the functional portion of the Recreation Project, in accordance with such lease. No provision of this Agreement shall merge into such lease, and each and every obligation of the Government and the Non-Federal Sponsor under this Agreement shall remain in full force and effect unless modified in writing by mutual agreement of the Government and the Non-Federal Sponsor.

H. Title to the Recreation Project, and to all land and water areas made available to the Non-Federal Sponsor by lease pursuant to this Agreement, shall at all times remain in the United States of America.

I. The Non-Federal Sponsor shall contribute 50 percent of total separable recreation costs in accordance with the provisions of this paragraph.

1. At least quarterly, the Non-Federal Sponsor shall provide the Government with current records of its actual expenditures under Articles V, X, and XV of this Agreement and its actual and projected expenditures under paragraph D. of this Article **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ANY LANDS, EASEMENTS, RIGHTS-OF-WAY, OR RELOCATIONS INCLUDING BORROW AND DREDGED OR EXCAVATED MATERIAL DISPOSAL AREAS (LERRD'S):** and Article III of this Agreement].

2. If the Government projects that the Non-Federal Sponsor's contributions under Articles II.D. **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ANY LERRD'S: III,]** V, X, and XV of this Agreement will be less than 50 percent of total separable recreation costs, the Non-Federal Sponsor shall provide an additional cash contribution during the period of construction, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 50 percent of total separable recreation costs.

3. Once the Non-Federal Construction, or any portion thereof, has been completed and has been approved pursuant to Article II.D.5. of this Agreement, the Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the costs attributable to the completed, approved Non-Federal Construction, or portion thereof. Upon receipt of such documents, the Government in a timely manner shall conduct an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shall include reasonable, allocable, and allowable costs in total separable recreation costs and afford the Non-Federal Sponsor that amount of credit toward its share of total separable recreation costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D. and I.2. of this Article and Articles **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ANY LERRD'S III,]** V, X, and XV of this Agreement have exceeded 50 percent of total separable recreation costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 50 percent of total separable recreation project costs. **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ANY LERRD'S:** After such a determination, the Government, in its sole discretion, may provide any remaining Recreation Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Recreation Project relocations on behalf of the Non-Federal Sponsor.]

J. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D. and I. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D. and I. of this Article.

K. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total separable recreation costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

L. The Government, as it deems necessary to carry out the authorized purposes of the **[FULL NAME OF EXISTING PROJECT]** shall control and regulate the waters stored in the reservoir of the **[FULL NAME OF EXISTING PROJECT]**, operate and maintain the dams, dikes, spillways, outlet works, access roads to the dam, and any associated Federal non-recreation facilities, and be responsible for removal of drift.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

[FOR ARTICLE III, USE OPTION I IF THE GOVERNMENT IS TO PROVIDE ALL LERRD'S AND OPTION II IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE]

OPTION I

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, maintenance, and replacement of the Recreation Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. Prior to the end of the period of construction, the Government shall acquire all separable recreation lands, easements, and rights-of-way which the Government does not hold title to as of the date of this Agreement.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. Prior to issuance of the solicitation for each Government construction contract, the Government shall prepare or ensure the preparation of plans and specifications for all improvements the Government determines to be required for the proper

disposal of dredged or excavated material under that contract and provide or ensure the provision of, all improvements the Government determines to be necessary for that contract.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Recreation Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. Prior to issuance of the solicitation for each Government construction contract, the Government shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. In accordance with Articles II and IV of this Agreement, the Government shall determine the value of any contribution of separable recreation lands, easements, and rights-of-way, including improvements required to enable the proper disposal of dredged or excavated material, and performing or ensuring the performance of relocations, provided pursuant to paragraphs A., B. or C. of this Article, include such value in total separable recreation costs, and afford credit for such value toward the Government's share of total separable recreation costs.

OPTION II

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, maintenance, and replacement of the Recreation Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Recreation Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation, maintenance, and replacement of the Recreation Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the Recreation Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper

disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of any such improvements that the Non-Federal Sponsor must provide in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Recreation Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of any such relocations that the Non-Federal Sponsor must provide in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B. or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total separable recreation costs, and afford credit for such value toward the Non-Federal Sponsor's share of total separable recreation costs. The Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of any contribution of separable recreation lands, easements and rights-of-way provided by the Government pursuant to paragraph A. of this Article and any contributions provided by the Government pursuant to paragraphs B. or C. of this Article, include such value in total separable recreation costs, and credit such value toward the Government's share of total separable recreation costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

[FOR ARTICLE IV, USE OPTION I IF THE GOVERNMENT IS TO PROVIDE ALL LERRD'S AND OPTION II IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE]

OPTION I

A. The Government shall receive credit toward its share of total separable recreation costs for the value of separable recreation lands, easements, and rights-of-way that the Government provides pursuant to Article III of this Agreement, and for the value of the relocations that the Government performs or for which it ensures performance pursuant to Article III of this Agreement, which are required for the Recreation Project and not otherwise included in the cost of the **[FULL NAME OF EXISTING PROJECT]**.

B. For separable recreation lands, easements, and rights-of-way owned by the Government on the effective date of this Agreement, the value shall be the fair market value of the real property interests on the effective date of this Agreement, as established by a Government appraisal. For separable recreation lands, easements, and rights-of-way acquired by the Government after the effective date of this Agreement, the value shall be the fair market value of the real property interests at the time such interests are acquired, as established by the amount paid for such interests. For separable recreation lands, easements, and rights-of-way acquired by eminent domain proceedings instituted by the Government after the effective date of this agreement, the value shall be the amount of the court award for the real property interests taken or the amount of any stipulated settlement.

C. For separable recreation lands, easements, and rights-of-way acquired by the Government prior to the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to,

closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any relocation assistance benefits provided in accordance with Pub. L. 91-646, as amended.

D. The Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the state of **[IDENTIFY APPROPRIATE STATE]** would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

E. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

OPTION II

A. The Non-Federal Sponsor shall receive credit toward its share of total separable recreation costs for the value of the separable recreation lands, easements, and rights-of-way that the Non-Federal Sponsor provides pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor performs or for which it ensures performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any separable recreation lands, easements, and rights-

of-way or relocations that have been provided or performed previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of separable recreation lands, easements, and rights-of-way or relocations to the extent that such items are provided or performed using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute. The Government shall receive credit toward its share of total separable recreation costs for the value of separable recreation lands, easements, and rights-of-way that the Government provides pursuant to Article III of this Agreement, and for the value of the relocations that the Government performs or for which it ensures performance pursuant to Article III of this Agreement, which are required for the Recreation Project and not otherwise included in the cost of the **[FULL NAME OF EXISTING PROJECT]**.

B. For the sole purpose of determining total separable recreation costs and affording credit in accordance with this Agreement, the value of separable recreation lands, easements, and rights-of-way shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of separable recreation lands, easements, and rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. For separable recreation lands, easements, and rights-of-way owned by the Government on the effective date of this Agreement, the value shall be the fair market value of the real property interests on the effective date of this Agreement, as established by a Government appraisal. The fair market value of separable recreation lands, easements, and rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of separable recreation lands, easements, and rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. **[NOTE: SEE DRAFT CHAPTER 12 OF ER 405-1-12 AND REVISION TO POLICY GUIDANCE LETTER NUMBER 11, DATED 21 APRIL 1989, FOR GUIDANCE ON THE USE OF FEDERAL VERSUS STATE RULES IN PREPARING AN APPRAISAL.]** The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such

appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For separable recreation lands, easements, and rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate

amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For separable recreation lands, easements, and rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Recreation Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For separable recreation lands, easements, and rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, and for separable recreation lands, easements, and rights-of-way acquired by the Government before or after the effective date of this agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any relocation assistance benefits provided in accordance with Pub. L. 91-646, as amended.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of **[IDENTIFY APPROPRIATE STATE]** would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the

relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to separable recreation lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planing, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Recreation Project, including issues related to design; plans and specifications; cost estimates; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Recreation Project or functional portions of the Recreation Project; preparation of the proposed OM&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, and replacement of the Recreation Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The

Government, having the legal authority and responsibility for construction of the Recreation Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total separable recreation costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

[FOR ARTICLE VI USE OPTION I IF CONSTRUCTION OF THE "RECREATION PROJECT" WILL BE COMPLETED WITHIN ONE FISCAL YEAR OR IF THE NON-FEDERAL SPONSOR ELECTS TO PROVIDE ITS SHARE IN ONE LUMP SUM. OTHERWISE, USE OPTION II.]

OPTION I

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties, including contributions provided by the Non-Federal Sponsor under Articles II.B., II.D., II.I., V, X, and XV of this Agreement, and current projections of total separable recreation costs and costs due to betterments and, at least quarterly, shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total separable recreation costs, of total costs due to betterments, of the components of total separable recreation costs, of each party's share of total separable recreation costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B. and II.I. of this Agreement, and of the non-Federal proportionate share. On the effective date of this Agreement, total separable recreation costs are projected to be \$_____, and the Non-Federal Sponsor's cash contribution required under Article II.I. of this Agreement is projected to be \$_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF CONSTRUCTION.]** Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.I.2. of this Agreement in accordance with the following provisions **[SEE ER 1165-2-131,**

APPENDIX B AND REVISION TO PROJECT MANAGEMENT GUIDANCE

LETTER NO. 11, DATED 18 DECEMBER 1992]: Not less than **[NUMBER OF DAYS, 30 OR MORE]** calendar days prior to the scheduled date for issuance of the solicitation for the first Government construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government, determines to be required from the Non-Federal Sponsor to meet its projected cash contribution. Not later than

such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred by the Government prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred by the Government during the period of construction. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within **[NORMALLY 60]** calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

OPTION II

A. Until the Government furnishes the Non-Federal Sponsor with the results of the final accounting, the Government shall maintain current records of contributions provided by the parties, including contributions provided by the Non-Federal Sponsor under Articles II.B., II.D., II.I., V, X, and XV of this Agreement, and current projections of total separable recreation costs and costs due to betterments and, by **[SPECIFIC DATE, BASED ON THE TIMING OF THE NON-FEDERAL SPONSOR'S FISCAL CYCLE]** of each year and at least quarterly thereafter, shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total separable recreation costs, of total costs due to betterments, of the components of total separable recreation costs, of each party's share of total separable recreation costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B. and II.I. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total separable recreation costs are projected to be \$_____, and the Non-Federal Sponsor's cash contribution required under Article II.I. of this Agreement is projected to be \$_____. **[NOTE: PROJECTIONS SHOULD BE INFLATED THROUGH THE PERIOD OF CONSTRUCTION.]** Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.I.2. of this Agreement in accordance with the provisions of this paragraph. **[SEE ER 1165-2-131, APPENDIX B AND REVISION TO PROJECT MANAGEMENT GUIDANCE LETTER NO. 11, DATED 18 DECEMBER 1992.]**

[ARTICLE VI.B.1. OFFERS THE NON-FEDERAL SPONSOR THREE MECHANISMS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE

ITS CASH CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE NON-FEDERAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE NEGOTIATION OF THE PCA. THE PCA SHOULD REFLECT ONLY ONE MECHANISM.]

1. Not less than **[NUMBER OF DAYS, 30 OR MORE]** calendar days prior to the scheduled date for issuance of the solicitation for the first Government construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall **[INDICATE MECHANISM: [1]** provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. **[2]** verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor. **[3]** present the Government with an irrevocable letter of credit acceptable to the Government for the required funds.]

2. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred by the Government prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred by the Government during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than **[NORMALLY 60]** calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article V.B.1. of this Agreement.

[INCLUDE PARAGRAPHS C. AND D. FOR BOTH OPTIONS I AND II IN ARTICLE VI.]

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. of this Agreement, the Non-Federal Sponsor shall **[INDICATE MECHANISM: [1]** provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT]**" to the District Engineer. **[2]** verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor.] The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within **[NORMALLY 30]** calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of the Recreation Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total separable recreation costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total separable recreation costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total separable recreation costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total separable recreation costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE AND REPLACEMENT, (OM&R)

A. Upon notification in accordance with Article II.F. of this Agreement and for so long as the Recreation Project remains authorized, the Non-Federal Sponsor shall operate, maintain, and replace the entire Recreation Project or the functional portion of the Recreation Project, at no cost to the Government, in a manner compatible with the Recreation Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and with specific directions prescribed by the Government in the OM&R Manual and any subsequent amendments thereto.

[INCLUDE PARAGRAPH VIII.B. IF THE NON-FEDERAL SPONSOR IS RESPONSIBLE FOR PROVIDING ANY LERRD'S.]

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Recreation Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining or replacing the Recreation Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Recreation Project for the purpose of completing, operating, maintaining, or replacing the Recreation Project. No completion, operation, maintenance, or replacement by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance and replacement of the Recreation Project and any Recreation Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Recreation Project shall be included in total separable recreation costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total separable recreation costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

A. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 issued pursuant thereto, and Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

B. Any contract awarded by the Non-Federal Sponsor for the Non-Federal Construction shall include provisions consistent with all applicable Federal laws and regulations, including, but not necessarily limited to, applicable Federal labor and equal opportunity laws and regulations such as the Davis-Bacon Act (40 U.S.C. 276a, et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Part 3 of Title 29, Code of Federal Regulations; and Title VI of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d, et seq.).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.I., VI, or XVIII.C. of this Agreement, the U.S. Army Engineer for the _____ District shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Recreation Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Recreation Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Recreation Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Recreation Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement, **[CHOOSE THE APPROPRIATE ONE DEPENDING UPON WHETHER THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** the Government / and upon direction by the District Engineer, the Non-Federal Sponsor] shall perform, or cause to be performed, any investigations for hazardous substances that the **[CHOOSE THE APPROPRIATE ONE DEPENDING UPON WHETHER THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** Government / Government or the Non-Federal Sponsor] determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Recreation Project. **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor

with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.] All actual costs incurred by the **[CHOOSE THE APPROPRIATE ONE DEPENDING UPON WHETHER THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** Government / Government or the Non-Federal Sponsor] for such investigations for hazardous substances shall be included in total separable recreation costs and cost shared in accordance with the provisions of this Agreement **[INCLUDE THE FOLLOWING IF THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** , subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs].

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Recreation Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the **[CHOOSE THE APPROPRIATE ONE DEPENDING UPON WHETHER THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** Government / Non-Federal Sponsor] shall not proceed with the acquisition of the real property interests until both parties agree that the **[CHOOSE THE APPROPRIATE ONE DEPENDING UPON WHETHER THE NON-FEDERAL SPONSOR IS TO PROVIDE ALL LERRD'S TO WHICH THE GOVERNMENT DOES NOT ALREADY HOLD TITLE:** Government / Non-Federal Sponsor] should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Recreation Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Recreation Project. Should the Government and the Non-Federal Sponsor determine to initiate construction or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total separable recreation costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this

Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Recreation Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Recreation Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, and replace the Recreation Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

[FULL ADDRESS]

If to the Government:

[FULL ADDRESS]

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties incurred before the end of the period of construction and attributable solely to the Recreation Project shall be included in total separable recreation costs and cost shared in accordance with the provisions of this Agreement.

B. The costs of identification, survey and evaluation of historic properties incurred after the end of the period of construction and attributable solely to the Recreation Project considered financial obligations for operation and maintenance of the Recreation Project and shall be paid by the Non-Federal Sponsor in accordance with Article VIII of this Agreement.

C. Pursuant to Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation attributable to the Recreation Project shall be borne entirely by the Government and shall not be included in total separable recreation costs, up to a limit of one percent of the total amount the Government is authorized to expend for the Recreation Project.

D. The Government shall not incur costs for mitigation and data recovery attributable to the Recreation Project that exceed the one percent limit specified in paragraph C. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery attributable to the Recreation Project that exceed the one percent limit and that are incurred before the end of the period of construction shall not be included in total separable recreation costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying recreation purpose, as follows: 50 percent borne by the Non-Federal Sponsor, and 50 percent borne by the Government. Any costs of mitigation and data recovery that exceed the one percent limit and are incurred after the period of construction are considered financial obligations for operation and maintenance of the Recreation Project and shall be paid by the Non-Federal Sponsor in accordance with Article VIII of this Agreement.

ARTICLE XIX - TRANSFER OR ASSIGNMENT

The Non-Federal Sponsor shall not transfer or assign this Agreement nor any rights acquired thereunder, nor grant any interest, privilege or license whatsoever in connection with this Agreement, unless the U.S. Army Engineer for the _____ District provides prior written approval, or such transfer or assignment is expressly permitted under the terms of a lease executed pursuant to paragraphs C. or G. of Article II. of this Agreement.

[INCLUDE ARTICLE XX ONLY IF THE NON-FEDERAL SPONSOR IS A STATE AGENCY OR DERIVES ITS FUNDS DIRECTLY FROM STATE LEGISLATIVE APPROPRIATIONS AND THE STATE IS LIMITED BY ITS CONSTITUTION OR

BY STATE STATUTES FROM COMMITTING FUTURE STATE LEGISLATIVE APPROPRIATIONS.]

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the **[LEGISLATURE]** of the State of **[NAME OF STATE]**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY THE [FULL NAME OF NON-FEDERAL SPONSOR]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with the development of recreation facilities at the **[FULL NAME OF EXISTING PROJECT]**, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 19____.

[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF PCA SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____